

American Booksellers Foundation for Free Expression Association of American Publishers, Inc. Comic Book Legal Defense Entertainment Merchants Association
Entertainment Software Association Foundation for Free Expression Motion Picture Association of America, Inc. National Association of Record Merchandisers Record Retailers Association of America, Inc.

Memorandum in Opposition to Connecticut Senate Bill 328

The members of Media Coalition understand that this is a very difficult time for many people in Connecticut but we believe that part of Senate Bill 328 is unconstitutional and part is unnecessary. The trade associations that comprise Media Coalition have many members throughout the country including Connecticut: publishers, booksellers and librarians as well as manufacturers and retailers of recordings, films, videos and video games. They have asked me to explain their concerns.

S.B. 328 would bar minors from playing certain video games in arcades or public establishments. It would also create a task force to study the effects of video games with violent content on youth behavior and make policy recommendations to the legislature and Governor to address the findings of the task force.

The ban on minors' access to certain video games in arcades or business establishments violates the First Amendment. In 2011, the Supreme Court struck down a California law that banned minors from buying or renting video games with certain violent imagery. *Brown v. Entertainment Merchants Association*, 564 U.S. ___, 131 S. Ct. 2729 (2011). In a comprehensive ruling, the Court found that video games are fully protected speech and that there is no exception to the First Amendment for violent content for adults or minors. First, the Court found that video games are entitled to First Amendment protection the same as other types of media. Justice Scalia, writing for the majority said, "[L]ike the protected books, plays, and movies that preceded them, video games communicate ideas—and even social messages—through many familiar literary devices (such as characters, dialogue, plot, and music) and through features distinctive to the medium (such as the player's interaction with the virtual world). That suffices to confer First Amendment protection." *Id.* at 2733.

The Court then found that there is no historic exception to the First Amendment for content with violent depictions or descriptions even as to minors. Justice Antonin Scalia noted that "California's argument would fare better if there were a longstanding tradition in this country of specially restricting children's access to depictions of violence, but there is none." *Id.* at 2736. The opinion then discusses numerous books read by children that are filled with violent and gory themes. Since the law imposed a restriction on speech based on its content and there was no historic exception to the First Amendment, the Court applied strict scrutiny analysis and found that the law failed because there was no compelling state interest and the law was both underinclusive and not the least restrictive means.

There is no basis in the *Brown* decision or other case law for treating video games in arcades or public businesses differently from those that are played at home. *Brown* was the culmination of more than a decade of litigation challenging laws restricting access to video games. The first challenge was brought in 1999 to an Indianapolis ordinance that barred minors from playing arcade games with violent content. A unanimous three judge panel found the

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ordinance violated the First Amendment in *American Amusement Machine Ass'n v. Kendrick*, 244 F.3d 572 (7th Cir. 2001), cert. denied, 534 U.S. 994 (2001).

We also believe it is unnecessary to form a committee to review the current research on the effects of video games on youth behavior. There have been numerous reviews of the social science by government bodies and the courts. These reviews have found that the science does not show that media with violent content causes actual violence despite the often sweeping claims of some believe there is a connection.

In 2012, the Swedish Media Council did a comprehensive survey of all available literature published in international research journals studies of video games with violent content and aggressive behavior during the period from 2000 to 2011. The Council considered 161 articles which contained 106 empirical studies and 55 articles consisting of "meta studies," research overviews, scientific debate articles, method critiques or comments on the articles of others. The report of the Council concluded that "there was no evidence for VCG (violent computer games) causing aggressive behaviour [sic]." <http://www.statensmedierad.se/Publikationer/Produkter/Report-on-violent-computer-games-and-aggression/>. A 2010 review by the Australian Attorney General's Department found that the studies on video games effects on aggression are divided. <http://www.ag.gov.au/cca>. The report summary notes that "[O]verall, as illustrated in this review, research into the effects of VVGs [violent video games] on aggression is contested and inconclusive."

Earlier U.S. government reports reached a similar conclusion. The Surgeon General's lengthy 2001 report *Youth Violence: A Report of the Surgeon General* concluded that, despite a "diverse body" of research, it was not possible to come to a conclusion about the effect of media consumption on minors in either the short or long-term. The Federal Trade Commission released its report in 2000 "Marketing Violent Entertainment to Children: A Review of the Self-Regulation and Industry Practices in the Motion Picture, Music Recording and Electronic Game Industries" stated that "[m]ost researchers and investigators agree that exposure to media violence alone does not cause a child to commit a violent act, and that it is not the sole, or even the most important, factor in contributing to youth aggression, antisocial attitudes, and violence." The National Research Council's comprehensive 1993 report *Understanding and Preventing Violence* offered a matrix of the risk factors for violent behavior. Media with violent content is not cited as a factor.

Courts have reached a similar conclusion after examining the research offered to justify similar laws. There have been eight other successful challenges to state and local laws barring minors from buying or renting video games with violent images. In each case where the court examined social science research, it ultimately concluded that the social science failed to establish a causal link between content with violent images and real world anti-social behavior. In *Brown*, the Court said of the research, "These studies have been rejected by every court to consider them, and with good reason: They do not prove that violent video games cause minors to act aggressively (which would at least be a beginning)....[T]hey show at best some correlation between exposure to violent entertainment and minuscule real-world effects, such as children's feeling more aggressive or making louder noises in the few minutes after playing a violent game than after playing a nonviolent game. *Brown*, 131 S. Ct. at 2379. See also, *Entertainment*

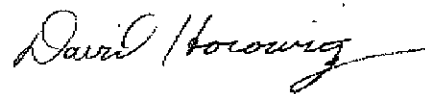
Software Ass'n v. Blagojevich 404 F. Supp. 2d. at 1063, 1066 *aff'd* 469 F.3d 641 (7th Cir. 2006).
AAMA v. Kendrick, 244 F.3d at 578; *Entertainment Software Ass'n v. Granholm*, 426 F. Supp. 2d
at 653; *Entm't Software Ass'n v. Hatch*, 443 F. Supp. 2d 1065, 1069 & n.1 (D. Minn. 2006);

We urge legislators to resist the temptation to blame the media for this tragedy. History has shown that each new medium from opera to the Internet has been blamed causing violent or criminal activity. These past fears of the media were no less palpable than those we feel today. In the '50s, the battle against comic books was championed by Dr. Frederic Wertham, a psychiatrist and the chief promoter of the threat they posed. He conducted extensive research that he claimed was proof that comic books turned kids into criminals. When the Senate held hearings to investigate how comic books were corrupting minors he told the Judiciary Committee "as long as the crime comic books industry exists in its present forms there are no secure homes." *See, Brown* at n. 5. We now know that his research was wrong and comic books were not the cause of juvenile delinquency.

If you would like to discuss further our position on this bill, please contact me at 212-587-4025 x3 or at horowitz@mediacoalition.org.

We ask you to please protect the First Amendment rights of all the people of Connecticut and reconsider S.B. 328.

Respectfully submitted,

A handwritten signature in cursive script that reads "David Horowitz". The signature is written in dark ink and has a fluid, connected style.

David Horowitz
Executive Director
Media Coalition, Inc.
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